

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

PETER J. MILLER, CLIFFORD HOYT, and CAMBRIDGE RESEARCH AND INSTRUMENTATION, INC., Plaintiffs, v. PATRICK TREADO and CHEMIMAGE CORP., Defendants	CIVIL ACTION NO. 05 10367 RWZ
--	--------------------------------------

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO EXTEND DISCOVERY SCHEDULE**

Defendants Patrick Treado and ChemImage Corp. hereby oppose Plaintiffs' Motion to Extend Discovery Schedule.

ARGUMENT

Through their motion, Plaintiffs would have this Court believe that the need to extend the discovery deadlines is the fault of Defendants. Nothing could be further from the truth. In February/early March 2006, Plaintiffs proposed a three-month extension of the original May 1, 2006 deadline for completion of fact discovery. Defendants and the Court agreed to that proposal. Yet Plaintiffs, who bear a clear and convincing burden of proof in this case, did not notice any depositions until July 7, 2006, more than sixteen months after filing their complaint and little more than three weeks before the fact discovery deadline. On that same date,

Defendants announced that they would be seeking a further three-month extension of the August 1 deadline. Letter from T. Holmberg to A. Fitzpatrick, dated July 7, 2006 [Exhibit 1 hereto].

In Defendants' July 11, 2006 letter [Exhibit 1 to Plaintiffs' Motion], Defendants responded to Plaintiffs' requested 3-month extension by agreeing to stipulate that any fact discovery noticed or served for completion on or before the existing August 1 deadline could be completed after August 1. Plaintiffs never responded to this proposal, apparently because Plaintiffs did not want to be restricted from continuing to serve new deposition notices and other discovery after the August 1 deadline.

Plaintiffs' failure to get its discovery served prior to August 1 is not the fault of Defendants. Indeed, it does not appear that Plaintiffs ever intended to meet the August 1 deadline, because even with that deadline looming their lead counsel left the country on vacation. In explaining why Plaintiffs were unable to produce witnesses for depositions prior to the August 1 cutoff, Plaintiffs stated:

Lead counsel for this case, Mr. Pavane, is currently on vacation out of the country, and will be returning on August 1st. Because of this, it is not possible for us to proceed with the three depositions noticed on August 1st. By the end of next week, we will provide substantive answers concerning your 30(b)(6) deposition notice on CRI and the dates on which the depositions you have noticed can proceed.

E-mail from T. Holmberg to A. Fitzpatrick, dated July 26, 2006 [Exhibit 2 hereto].

In view of Plaintiffs' conduct, Defendants have no alternative but to reluctantly agree to a 2-month extension of all discovery deadlines, but Defendants oppose any extension of the deadlines beyond two months. Defendants therefore respectfully request that the Court revise the existing discovery schedule as follows:

<u>Event</u>	<u>Previously Scheduled Dates</u>	<u>Proposed Dates</u>
Completion of fact discovery: -completion of non-expert depos -responses to all discovery requests	August 1, 2006	October 1, 2006
Identification of Experts (FRCP 26(a)(2)(A))	August 15, 2006	October 15, 2006
Opening Expert Reports – i.e., for which the party has the burden of proof (FRCP 26(a)(2)(B))	September 15, 2006	November 15, 2006
Rebuttal Expert Reports (FRCP 26(a)(2)(B))	October 15, 2006	December 15, 2006
Completion of Expert Depositions	November 15, 2006	January 15, 2007

WHEREFORE, Defendants respectfully request that the Court deny Plaintiffs' Motion to Extend Discovery Schedule, and instead extend existing deadlines by no more than two months.

PATRICK TREADO AND CHEMIMAGE CORP.

By their attorneys,

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick (BBO #56324)
Duane Morris LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210
Telephone: 617.289.9220
Fax: 617.289.9201
e-mail: ajfitzpatrick@duanemorris.com

Paul D. Weller (admitted *pro hac vice*)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Telephone: 215.963.5530
Fax: 215.963.5005
e-mail: pweller@morganlewis.com

July 28, 2006

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on July 28, 2006.

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick

DM2\779790.2

EXHIBIT 1



COHEN PONTANI LIEBERMAN & PAVANE

551 Fifth Avenue, New York, NY 10176 phone 212.687.2770 fax 212.972.5487 www.cplplaw.com

Myron Cohen (1927-2005)
Thomas C. Pontani, Ph.D.
Lance J. Lieberman
Martin B. Pavane
Thomas Langer
Michael C. Stuart
William A. Alper
Edward M. Weisz
Kent H. Cheng, Ph.D.

Sidney R. Bresnick
Of Counsel

Julia S. Kim
Mindy H. Chettih
Vincent M. Fazzari
Alfred W. Froeblich
Alfred H. Hemingway, Jr.
Roger S. Thompson
Teodor J. Holmberg
Lisa A. Ferrari
Richard D. Margiano
Darren S. Mogil
David P. Badanes
Mher Hartoonian
Alphonso A. Collins
Douglas D. Zhang
Edward V. DiLello
Edward M. Reisner

Enshan Hong
Technical Advisor

July 7, 2006

VIA E-MAIL

Anthony J. Fitzpatrick, Esq.
Duane Morris LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210

Re: Notices of Depositions and Extension of Time in
Cambridge Research & Instrumentation, Inc., Peter J. Miller
and Clifford Hoyt v. ChemImage Corporation and Patrick Treado
Civ. No. 05-10367-RWZ (D.Mass.)
Our File No.: 34250-60L

Dear Mr. Fitzpatrick:

Attached, we are serving notices of deposition on Matthew Nelson, Scott Keitzer, Juliana Ribar, and defendant Patrick Treado for depositions during the week of July 17, 2006. Please contact us as soon as possible if there is a problem with any of the dates, so we can work out a mutually acceptable schedule.

We have assumed Nelson, Keitzer, and Ribar are still employed at ChemImage. If not, please indicate (a) their current addresses, and (b) whether you will accept service on their behalf.

Fact discovery is scheduled to end August 1, 2006. As our motion to compel is still pending, and no depositions have occurred, we will be filing a motion for a three month extension of time next week; please indicate whether you will assent.

Very truly yours,
COHEN, PONTANI, LIEBERMAN & PAVANE

/s/ Teodor J. Holmberg

MBP/TJH/tdg

Enc.

cc: Paul D. Weller, Esq.

EXHIBIT 2

Fitzpatrick, Anthony J.

From: Tidge Holmberg [THolmberg@cplplaw.com]
Sent: Wednesday, July 26, 2006 12:23 PM
To: Kroon, Christopher S.; pweller@morganlewis.com; dgolub@morganlewis.com; kracowski@morganlewis.com; Fitzpatrick, Anthony J.
Cc: bmichaelis@brownrudnick.com; Martin B. Pavane; Delphine Puybureau-Manaud; Sandy Cantres; Wanda Mason
Subject: Miller et al. v Treado et al. :: Depositions
Importance: High

Counsel:

Lead counsel for this case, Mr. Pavane, is currently on vacation out of the country, and will be returning on August 1st. Because of this, it is not possible for us to proceed with the three depositions noticed on August 1st. By the end of next week, we will provide substantive answers concerning your 30(b)(6) deposition notice on CRI and the dates on which the depositions you have noticed can proceed.

Teodor J. Holmberg
Cohen, Pontani, Lieberman & Pavane
551 Fifth Avenue
New York, New York 10176
Phone: 212-687-2770
Fax: 212-972-5487

e-mail: tidge@cplplaw.com

CONFIDENTIALITY NOTICE

The information contained in this message is legally privileged and/or confidential information intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this message or its content is strictly prohibited. If you have received this message in error, please immediately notify us and erase it without making a copy. Thank you.